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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,754	09/11/2006	Steffen Gallasch	101194-101	9867
27387	7590	04/29/2009	EXAMINER	
NORRIS, MC LAUGHLIN & MARCUS, P.A. 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			SULLIVAN, MATTHEW J	
		ART UNIT	PAPER NUMBER	
		3677		
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		04/29/2009		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/598,754	GALLASCH ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	MATTHEW SULLIVAN	3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 July 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 10 July 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>9/11/06</u> .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

In **Claim 1**, Applicant has claimed the limitation "the carcass" in lines 2 and 3.

This is not the correct terminology.

Applicant has also attempted to limit the claim with "...preferably as a door leaf mounting part...", the use of the term "preferably" is indefinite.

Furthermore, in **Claim 1**, it is unclear whether Applicant is intending to claim the combination of the damping device and hinge or only the damping device. Examiner advises Applicant to revise claims to read in standard "comprising" format. Examiner assumes Applicant intends to claim a damping device and commences examination under that assumption.

In **Claim 3**, Applicant has claimed a "...fixing means preferably formed by projections...", the term "preferably" renders the claim indefinite.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by**

**Lautenschlager, U.S. Patent 7,275,284 (10/2/07 – U.S. pub 10/21/04 – PCT filed 5/4/02).**

Applicant has claimed:

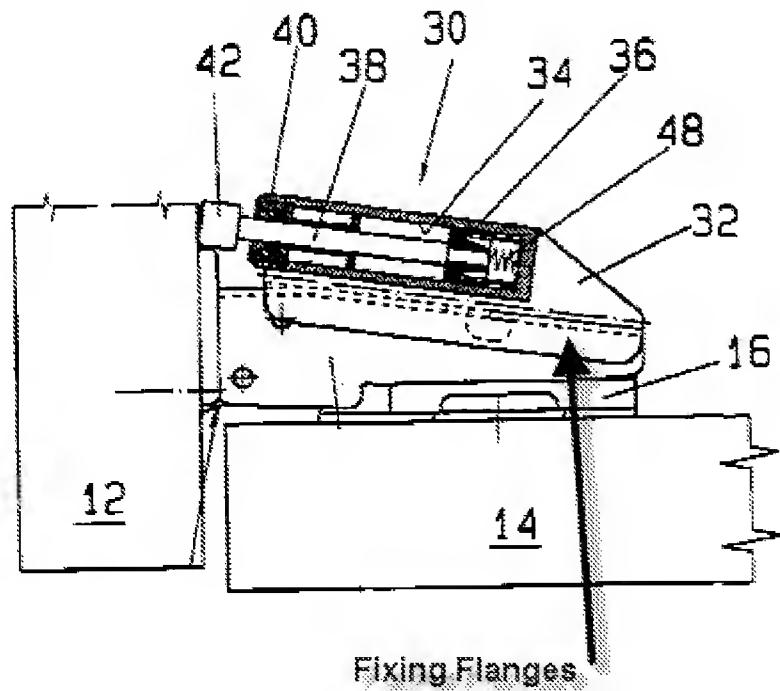
**Damping device (30) [for hinges (10) for the pivotable articulation of door leaves (12) or door flaps on the carcass of pieces of furniture, in which the hinge has respectively a supporting wall mounting part (18) which can be fixed on the supporting wall (14) of the carcass and a door leaf mounting part (24) which is pivotably coupled via a linkage mechanism (20; 22) to the supporting wall mounting part and can be fixed on the inner face of the door leaf or flap, preferably as a door leaf mounting part which is countersunk and engages in a recess in the door leaf or flap and which has laterally projecting fixing flanges which bear on the inner face,]\*1 wherein the damping device (30) has a damper housing (32) [which is provided on the door leaf mounting part (24) and which is provided in the cavity thereof]\*2 with a fluid or gaseous damping medium and a resistance element which is movable relative to the damping medium and is coupled to an actuating element (39) which extends out of the housing, wherein at least during part of the pivoting movement of the mounting parts (18, 24) relative to one another the actuating element is in [engaged connection directly or indirectly with the supporting wall mounting part (18)]\*2 and transmits to the resistance element the relative movement of the mounting parts as they pivot, characterised in that the damper housing (32) is a separate component which is provided with laterally projecting fixing flanges (38,46) [which can be fixed on the fixing flanges (48) of the door leaf mounting part (24).]\*2**

Lautenschlager clearly teaches a damping device for a hinge (see fig. 1) wherein the damping device (30) has a damper housing (32), is a separate component with laterally projecting fixing flanges (see below) is provided with a fluid or gaseous damping medium (see Col 5, Lines 4-24), a resistance element (48) movable relative to the damping medium coupled to an actuating element (42) which extends out of the

housing and transmits the relative movement of the hinge mounting parts and is capable of being mounted on the fixing flanges of the door leaf mounting part.

The claim language above bracketed as [...]\*1 is considered intended use recitation and is given no patentable weight.

The claim language above bracketed as [...]\*2 is considered functional language and is given no patentable weight as the prior need only **be capable** of performing the claimed function.



#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lautenschlager in view of Grass, U.S. Patent 4,870,716 (10/3/89).**

Applicant has claimed:

Damping device as claimed in Claim 1 **[for hinges in which the door leaf mounting part (24) is provided in the region of its fixing flanges (48)]**<sup>\*1</sup> with a plate (44) **[which is intended for covering of the fixing flanges and/or actuation of additional fixing means for the mounting part and which at least covers parts of the fixing flanges in the prescribed covered or fixed position bearing on the fixing flanges (48),]**<sup>\*2</sup> wherein the said plate is disposed so that it can be pivoted up about an axis (a) extending parallel to the hinge pivot axis on the door leaf stop part (24), characterised in that the damper housing (32) and the plate (44) are combined into one integral component.

All the aspects of the instant invention are disclosed above but for a plate disposed so that it can be pivoted up about an axis (a) extending parallel to the hinge pivot axis on the door leaf stop part characterized in that the damper housing and the plate are combined into one integral component. Grass teaches a plate (1) disposed so that it can be pivoted about an axis (defined by element 7) extending parallel to the hinge pivot axis. Grass does not teach a damper housing and a plate combined into one integral component. However, it is generally considered within the ordinary skill of one in the art to make elements integral barring any unforeseen result, *In re Larson*. At the time of the invention it would have been obvious to one of ordinary skill in the art to provide Lautenschlager with the features of Grass because making the damper integral with and rotatable with the plate of Green because it would provide additional retention of the damper on the hinge, **[Claim 4]**.

Regarding **Claim 5**, Applicant has claimed:

Damping device as claimed in Claim 1 [for hinges in which the door leaf mounting part (24) is provided in the region of its fixing flanges (48) with a plate (44) which is intended for covering of the fixing flanges and/or actuation of additional fixing means for the mounting part and which at least covers parts of the fixing flanges in the prescribed covered or fixed position bearing on the fixing flanges (48)]\*1, wherein the said plate is disposed so that it can be pivoted up about an axis (a) extending parallel to the hinge pivot axis on the door leaf stop part (24), characterised in that the fixing flanges projecting from the damper housing (32) are formed by thin flat tab-like extensions (46) [which only cover parts of the fixing flanges of the door leaf mounting part and which when the covering or fixing plate (44) of the door leaf mounting part (24) is pivoted up can be placed on associated areas of the fixing flanges of the door leaf mounting part and can be releasably connected to the fixing flanges of the mounting part and can be covered and secured against separation from the door leaf mounting part after the covering or fixing plate (44) of the door.]\*2

Regarding **Claim 5**, in light of the rejection above of **Claim 5**, Lautenschlager further teaches the fixing flanges being formed by thin flat tab-like extensions (see below).

Regarding **Claim 6**, all of the intended limitations in the claims are considered functional language and are given no patentable weight as the prior need only **be capable** of performing the claimed function.

Regarding **Claim 7**, Grass further teaches tab-like extensions (5) with through holes (6).

Regarding **Claim 8**, Grass teaches a fixing screw passing through each of the through holes of the tab-like extensions (see element 7).

The claim language above bracketed as [...]\*1 is considered intended use recitation and is given no patentable weight.

The claim language above bracketed as [...]\*2 is considered functional language and is given no patentable weight as the prior need only **be capable** of performing the claimed function.

**Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lautenschlager in view of Neissner, U.S. Patent 5,829,814 (11/3/98).**

All the aspects of the instant invention are disclosed above (including the fixing flanges of the damper housing are shaped so that they correspond substantially to the outer boundary of the fixing flanges of the door leaf mounting part) but for the edge region provided with projecting narrow edge portions. Neissner does teach a cover (15) with fixing flanges (17) and projecting narrow edge portions (19). At the time of the invention it would have been obvious to one of ordinary skill in the art to provide the fixing flanges of Lautenschlager with the edge portions of Neissner because lug clips as taught by Neissner are well known to be an easily usable, repeatably installable and removeable coupling method, **[Claims 2, 3]**.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW SULLIVAN whose telephone number is (571)270-5218. The examiner can normally be reached on Mon-Thurs, 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor D. Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor Batson/  
Supervisory Patent Examiner, Art Unit 3677

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